

# CHAPTER 17 - Encroachments in Caltrans' Right of Way

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# CHAPTER 17 - Encroachments in Caltrans' Right of Way

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## ARTICLE 1 - Definition

### **Encroachment**

An encroachment, as defined in Section 660 of the Streets and Highways Code, can be any tower, pole, pole line, pipe, pipe line, fence, billboard, stand or building, or any structure or object of any kind or character which is within the right of way but not a part of the Caltrans facility.

Authority for Caltrans to control encroachments within the State highway is contained in the Streets and Highways Code starting with Section 660.

Encroachments allow temporary or permanent use of highway right of way by a utility, a public entity, or a private party. Encroachments include all public and private utilities within State right of way, such as: communication, electric power, water, gas, oil, petroleum products, steam, sewer, drainage, irrigation, and similar facilities.

Encroachments also include any temporary or permanent break in access or use of the highway right of way: for grading, excavating, filling or removing of materials by public agencies, developers or private individuals.

## ARTICLE 2 - Utility Encroachment Policy

### **Policy**

Caltrans has adopted AASHTO's "Policy on the Accommodation of Utilities Within Freeway Right of Way," dated February 1989, and AASHTO's "A Guide for Accommodating Utilities Within Highway Right-of-Way" dated 1981.

Caltrans general policy is to allow utilities within conventional rights of way subject to reasonable conditions to provide for the safety of the traveling public and to permit the improvement of the highway.

Caltrans policy with regard to freeways and expressways is to exclude utilities from within access controlled rights of way, to the extent practicable. It recognizes that freeway rights of way are a valuable commodity, and that such value to the traveling public could be seriously eroded by allowing uncontrolled access by utilities. The policy is intended to provide a safe environment for traffic operations, minimize the disruption to the traveling public, and assure the safety of utility employees during maintenance of their facilities.

## **New Utility Longitudinal Encroachments**

With the exception of special cases permitted under strictly controlled conditions, new utilities will not be permitted to be installed longitudinally within the access control lines of any freeway or expressway — including installations on structures that cross major valleys or rivers and installations through tunnels. Utilities will not be allowed to be installed longitudinally within the median area. Utilities that transport hazardous materials will not be allowed in a vehicular tunnel under any circumstances.

These provisions were established to provide for the maximum degree of safety and to preserve the traffic-carrying capacity, both of which are warranted by the large public fund investment in freeways. Exceptions can be made at locations where circumstances make it impossible or unreasonably costly to locate utilities outside of the access controlled right of way. To the extent feasible and practicable, any utility installations allowed within access controlled rights of way should be located so that they can be serviced and maintained from outside the right of way.

## **Exceptions**

Requests for utility encroachments or utility access within freeway or expressway right of way are considered an exception to policy and are to be submitted to the Program Manager of the Design and Local Programs Program (DLPP) for approval.

On February 22, 1988, Executive Order No. 85-11 established the Caltrans Encroachment Committee (CEC) to review and approve encroachment exceptions. All authorities and responsibilities of the CEC have been transferred to the DLPP Program Manager, who has delegated it to the Chief of Office of CTC Highway Appearances, Highway Encroachments and Resource Conservation, and the CEC has been abolished. An Encroachment Advisory Group (EAG) is utilized to assist in the resolution of the more complex encroachment requests, but the DLPP Manager reserves the authority to make the final decisions.

## **Justification for Exceptions**

Where such longitudinal installations are requested, the utility owner must assure Caltrans of all of the following:

- That the accommodation will not adversely affect highway safety and traffic operations.
- That alternate locations are not available or cannot be implemented at a reasonable cost, from the standpoint of providing efficient utility services in a manner conducive to safety, durability, and economy of maintenance and operations.
- That the accommodation will not adversely affect the design, construction, operation, maintenance, or stability of the highway facility.

- That the accommodation will not interfere with or impair the present use or future expansion of the highway facility.
- That disapproval of the use of the right of way would result in loss of productive agricultural land, or loss of productivity of agricultural land, if any. In this case, the utility must provide information on the direct and indirect environmental and economic effects of such loss. These effects will be evaluated and considered by Caltrans.
- That the utility be located in such a manner that it can be serviced, maintained, and operated without being accessed from the through-traffic roadways or ramps — except for special cases where alternate locations or means of access are unavailable or impractical due to terrain or environmental constraints — and where such use will not adversely affect safety or cause damage to the State facility.

### **Existing Utility Longitudinal Encroachments**

Where (1) a utility already exists within the existing or proposed right of way of a freeway or expressway and (2) it can be serviced, maintained, and operated without being accessed from the through-traffic roadways or ramps — it may remain as long as it does not adversely affect the safety, design, construction, maintenance or stability of the highway. Where these conditions cannot be met, the utility must be relocated. Exceptions may be granted for locations where circumstances make it impossible or unreasonably costly to locate utilities outside of the access controlled right of way, but must be approved by the DLPP Manager.

### **Crossing Major Structures**

Where a freeway or expressway crosses a major valley or river on an existing structure, any utility carried by the structure at the time the highway route is improved may continue to be carried — when relocation of the utility would be very costly — and provided the utility can be serviced without interfering with highway users. The existing utility may also be expanded under these conditions.

### **Tunnels**

Where a utility occupies space in an existing vehicular tunnel that is converted to a freeway or expressway, relocation of the utility may not be required unless it transports High Risk material.

### **Transverse Utility Encroachment**

New utility installations, and adjustment or relocation of existing utilities, may be permitted to cross a freeway or expressway. To the extent feasible and practicable, they should cross on a line generally normal to, but not less than 60° from the freeway longitudinal alignment, and preferably under the freeway.

The utility should be located in such a manner that it can be serviced, maintained, and operated from outside the right of way, except for special cases covered above under "New Utility Longitudinal Encroachments".

Air space leases for wireless communications facilities fall under the general guideline for transverse encroachments, since they are individually reviewed and approved by the District Air Space Review Committee (DARC). The DARC uses special guidelines developed for wireless communication facilities.

### **Utility Encroachments on Toll Bridge**

Utilities may be permitted, on a case-by-case basis, to be installed on toll bridges where there is an adequate location on the bridge for the utility, and where alternative locations are unavailable or impractical. In addition, all of the following criteria must be met:

- The utility does not transport High Risk material.
- The utility is lightweight.
- The utility does not require regular routine maintenance.
- The utility construction and maintenance will be done during hours approved by Caltrans.
- The utility is supported by a backup system so that emergency maintenance and repairs are not required.
- The utility is under PUC jurisdiction or is publicly owned; it is used to provide a service to the public and is dedicated to public use.
- The utility will provide capacity for other utility companies of the same type service.

These installations must have the approval of the DLPP Manager.

### **Reclaimed Water System Encroachments**

In accordance with the requirements of Section 92.3 of the Streets and Highways Code, Caltrans is interested in reducing dependency upon imported potable water. To this end, Caltrans will cooperate with local public agencies or water public utility agencies for the transmission of reclaimed water within freeway or expressway right of way. Such installations may be permitted by Caltrans under strictly controlled conditions. These installations are encroachments, and must have the approval of the DLPP Manager.

#### **Caltrans as Sole User**

When Caltrans is the sole user of the reclaimed water, the supplier of the reclaimed water will deliver it to a mutually agreed point at the highway right of way line. From this point, Caltrans will have sole responsibility for the transmission and distribution of the reclaimed water for irrigation purposes.

**Caltrans Shares Use**

When the transmission line serves both Caltrans (present or future) and other users, the longitudinal use of the freeway or expressway by the local public agency or water public utility can be permitted. If any segment of the transmission line between distribution points for Caltrans' use exceeds 0.8 km, the supplier must show that any other location outside of the highway right of way would be inordinately difficult or unreasonably costly.

All of the following criteria must be met:

- Reclaimed water used for irrigation purposes must meet local and State health codes.
- The local public agency or water public utility is responsible for the initial cost, or any relocation cost, of those reclaimed water transmission lines located within the right of way and used for service to other users: The agency or utility waives its rights to require Caltrans to pay the relocation cost, pursuant to Sections 702 and 703 of the Streets and Highways Code.
- The local public agency or water public utility will be required to hold Caltrans harmless for any liability caused by a disruption of service to other users and (a) must defend Caltrans in any resulting legal action, and (b) must pay any damages awarded as a result of the disruption.
- The local public agency or water public utility must maintain the water transmission system. Maintenance access will not be permitted from the roadway or ramps.
- The reclaimed water transmission system for Caltrans and other users must be owned by the local public agency or water public utility.
- Caltrans must have first priority with respect to the reclaimed water supply.
- Caltrans, in cooperation with the local water agency or water public utility, may temporarily interrupt service in order to add to or modify its facilities. Such an interruption would not cause Caltrans to incur any liability.
- There must be a defined benefit to Caltrans, such as assured water supply (present and future), waiver of connection fees, or waiver of capitalization fees.
- The local public agency or water public utility will obtain and furnish Caltrans with an agreement that is signed by all others using the reclaimed water from the transmission system and that holds Caltrans harmless for any disruption in service.

- The local public agency or water public utility must install an automatic control system that will allow a shutdown in case of an emergency. Caltrans must have access to all parts of the transmission system.
- All transmission lines must be placed underground and as close as possible to the freeway right-of-way boundaries, or at other locations authorized by Caltrans. No median location shall be allowed.
- The local public agency or water public utility must furnish Caltrans a list of other reclaimed water users and information on any backup system and source of water available for use in case of service disruption.
- The plans and specifications for the reclaimed water transmission facilities lying within the highway rights of way must be approved by Caltrans prior to construction.
- The local public agency or water public utility is responsible for acquiring all necessary permits and/or approvals required to furnish reclaimed water to other users.

#### **Caltrans Does Not Use Transmission Line**

When the transmission line does not serve Caltrans, the normal utility encroachment process is to be followed.

#### **Utility Certification**

The Project Engineer (PE) must certify that the accommodation of all utilities within the project right of way or within construction easements complies with Caltrans policy, as outlined in this chapter. This includes High Risk, Low Risk, and all other utilities. Prior to listing the project for advertisement, this certification must be submitted to the Office of the Office Engineer of the Engineering Service Center (OOE-ESC). See Appendix LL for the format and preparation guidelines for the "Project Engineer's Certification of Utility Facilities."

## **ARTICLE 3 - Encroachment Policy for Work Other than Utilities**

#### **Statutory Authority**

It is Caltrans' policy to prohibit private use of highway right of way. Caltrans has no statutory authority to allow the permanent use of highway right of way by a private party without compensation or benefits. Such action would constitute a gift of public funds under Section 6 of Article 16 of the California Constitution. This policy applies to all operating facilities; i.e., freeways, expressways, and conventional highways.

## **Encroachment Requests**

Permit requests to encroach into Caltrans' right of way are to be considered on an individual basis, including requests for the purpose of grading, excavating, removing materials, or placing an embankment.

## **Caltrans Approval Authority**

Non-utility types of encroachments are considered an exception to policy. Requests for such encroachments require approval of the DLPP Manager.

## **Conditions of Approval**

Requests to utilize highway right of way for non-utility encroachments will not be granted unless all of the following criteria are met:

- There is sufficient consideration, in the form of benefits to Caltrans, to compensate for the removal of material from – or some other use of – the rights of way.
- The encroachment does not create a safety hazard.
- The encroachment does not create additional maintenance requirements.
- The encroachment does not obligate Caltrans to any current or future liability to protect the proposed adjoining private development work.
- The encroachment does not restrict the current or future use of the rights of way for transportation purposes.
- The encroachment does not conflict or reduce current or future income associated with airspace leasing, excess land sales, or other Caltrans income-earning capabilities.

## **Benefits to the State**

One or all of the following benefits may be derived from a requested encroachment to perform grading or removal of material:

- Flatter cut slopes
- Lowering of a cut by removal of material
- Improved drainage
- Better sight distance
- Fewer slopes to maintain
- Other

### **Embankments**

Benefits to be derived from the placement of an embankment are rather limited and may be hard to define. They may include the filling of a depressed area to improve drainage and/or provide for a safer recovery area for vehicles. Construction of embankments that add additional slopes should be avoided: such construction may impose a lateral support obligation on Caltrans that does not currently exist and may, in fact, require removal for future highway purposes. An alternative would be for Caltrans to declare the portion of right of way requested as excess land and to sell it for fair market value. Consideration of this alternative would depend on the projected future uses of the facility; this is not always a viable alternative.

### **No Benefits for the State**

Requests to remove material solely to benefit a developer or individual (such as to eliminate the need by the developer or individual to import material to their private property) will not be approved.

## **ARTICLE 4 - Locked Access Gates**

### **Caltrans Approval Authority**

This article covers Caltrans' procedures regarding use of locked gates to provide non-Caltrans personnel with access to freeway and expressway rights of way. Such locked gates require the approval of the DLPP Manager. Locked gates for use by Caltrans personnel do not require such approval. Locked gate approval for airspace leases for wireless telecommunication sites has been delegated to the District Airspace Review Committee (DARC).

### **FHWA Approvals**

Federal Highway Administration (FHWA) approval is not required for locked gates that provide access for Caltrans personnel or that provide maintenance access for a utility company. Locked gates to be used by any other public agency require FHWA approval if they are on an Interstate Route or if the FHWA participated in the cost of the freeway right of way.

### **Utility Access Gates**

Locked gates may be utilized along a freeway or expressway fence to provide periodic access to approved utility installations within Caltrans' right of way.

### **Emergency Access from Freeways and Expressways**

To preserve and protect the access control inherent in the freeway and expressway system, it is Caltrans' policy to prohibit planned emergency access for new or expanded developments. Emergency access must be planned for and provided from local streets or conventional highways outside the access control limits of freeways and expressways.

It is unacceptable for planning agencies to assume that the access can be breached or provided with breakaway panels or locked gates in lieu of other appropriate alternatives.

The same prohibition of emergency access will apply to any request for additional emergency access to existing development. However, existing emergency access that was granted in the past will be allowed to remain.

In responding to emergencies, fire districts, law enforcement agencies, or other emergency functions may cut or otherwise breach access fences if required to quickly respond to a specific emergency. In such cases, they must secure an encroachment permit, replace fencing, and restore the State right of way to pre-emergency conditions — at their own expense.

## ARTICLE 5 - High and Low Risk Underground Facilities

### **Policy**

Caltrans is responsible for providing a safe environment for the employees of both Caltrans and its contractors, as well as the traveling public. To accomplish this, it is important to provide a clear and safe right of way through the proper placement, protection, relocation, or removal of High Risk utility facilities that may pose a safety risk to the highway worker or user if the utility is cut or punctured. The "Policy on High and Low Risk Utilities in Highway Rights of Way" is included in Appendix LL.

## ARTICLE 6 - Procedures for Requesting an Exception to Caltrans' Encroachment Policy

### **Overview**

The district is responsible for obtaining all necessary information from the applicant, owner, or other source. All requests for exceptions to Caltrans' policy that do not fall under the jurisdiction of the district, must be submitted to the DLPP Manager, Attention: Encroachment Exceptions. Failure to provide sufficient information will delay consideration of the request until the necessary information is furnished. Every effort should be made to include all encroachments within a project in the same request.

### **Submittal Contents**

The submission material should include the following:

1. A small-scale index map showing, in outline form, the general alignment of the freeway, crossroads, frontage roads, ramps, and major geographic features. Generally, title sheets and freeway strip maps will suffice.

2. A plan (1:500 to 1:2000 scale) showing a graphic outline of the following:
  - The pavement and shoulder edges of the freeway or expressway, crossroads, collector roads, and ramps. It should also show adjacent roads or streets, including proposed or existing frontage roads to which the facilities may be moved.
  - Right of way and access denial lines
  - Present and proposed location of the utility or utilities involved, and physical features that affect the proposed location. Use a dashed colored line to show existing facilities and a solid line in the same color for relocated position of facility.
  - Trace of slope catch points
  - Location of existing drainage facilities
  - Fencing and location of locked gates, where this means of access is proposed
  - The plan need not be a special drawing. Copies of contract plans, projection drawings, geometric approval drawings, etc., are suitable. Whenever feasible, the plan should be a 280 mm high strip map as long as necessary to show the entire encroachment; however, separate sheets will also serve this purpose.
3. Profiles, cross sections, and contour grading should be included if necessary to clarify controls.
4. A statement as to whether the facilities must be relocated to permit construction and whether the utility might be allowed to remain in place for the initial construction but would require relocation for the ultimate construction.
5. A statement of the district's opinion as to whether allowing a utility facility to remain within the right of way would present a safety problem or would cause highway maintenance problems.
6. The district's recommendation in connection with the disposition of the utility facility.
7. A full explanation shall be given as to the route and method by which the utility owner will gain ingress and egress to the encroaching facility.
8. A full explanation of the available alternatives to the proposed encroachment, together with costs and the potential consequences, if the requested encroachment is not approved.

9. The estimated savings to the State that would accrue by proceeding as proposed.
10. The letters submitting the information must include the signature approval of the District Division Chiefs for Design, Right of Way, Maintenance and Operations Units.
11. Environmental status
12. Concurrence from Structures Maintenance, when structures are involved

### **Submission Procedures**

- All correspondence and submittals must be addressed to the DLPP Manager, Attention: Encroachment Exceptions.
- All attachments should be folded to letter size.
- One copy of each request, with attachments, is normally required. If there is a need to expedite the review, four copies should be submitted.
- If the encroachment involves a bridge, one additional copy must be submitted.

### **District Recommendation**

No encroachment proposals should be submitted without district recommendation, as indicated by the signatures of the District Division Chiefs for Right of Way, Maintenance, Operations, and Design. In those instances where an applicant with an encroachment proposal refuses to accept the district's denial of application, the district should contact the DLPP Manager, Attention: Encroachment Exceptions.

It is standard practice to process all applications from written requests. If an applicant or district personnel want to make a personal appearance at the HQ encroachment meeting, prior approval should be obtained from the DLPP Manager.

### **Approval**

The DLPP Manager will affirm or deny, in writing, each submittal considered.

### **Policy Administration**

The PE is responsible for administering the Utility Encroachment Policy for highway construction, project-related encroachments.

The District Permit Engineer is responsible for administration of the policy for new, non-highway, project-related installations.

The District Utility Coordinator is responsible for coordinating the requirements of this policy with all utility owners, as directed by the Project Engineer.